

AMENDED IN SENATE AUGUST 22, 2014  
AMENDED IN SENATE JUNE 16, 2014  
AMENDED IN SENATE JUNE 3, 2014  
AMENDED IN SENATE MARCH 18, 2014  
AMENDED IN SENATE JUNE 25, 2013  
AMENDED IN ASSEMBLY MAY 28, 2013  
AMENDED IN ASSEMBLY APRIL 22, 2013  
AMENDED IN ASSEMBLY MARCH 19, 2013  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 26**

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**Introduced by Assembly Member Bonilla**  
(Coauthor: Senator Hueso)

December 3, 2012

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An act to amend Section 1720 of the Labor Code, relating to prevailing wage.

### LEGISLATIVE COUNSEL'S DIGEST

AB 26, as amended, Bonilla. Construction: prevailing wage.

Existing law defines the term “public works” for purposes of requirements regarding the payment of prevailing wages. Existing law generally defines “public works” to include construction, alteration, demolition, installation, or repair work done under contract and paid in whole or in part out of public funds. Existing law defines “construction” for these purposes to include work performed during the design and preconstruction phases of construction. Existing law makes a willful

violation of laws relating to payment of prevailing wages on public works a misdemeanor.

This bill would revise the definition of “construction” to also include work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. By expanding the definition of a crime, this bill would impose a state-mandated local program.

*This bill would incorporate additional changes in Section 1720 of the Labor Code proposed by AB 2272, that would become operative only if SB 2272 and this bill are both chaptered and become effective on or before January 1, 2015, and this bill is chaptered last.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1720 of the Labor Code is amended to  
2 read:  
3 1720. (a) As used in this chapter, “public works” means:  
4 (1) Construction, alteration, demolition, installation, or repair  
5 work done under contract and paid for in whole or in part out of  
6 public funds, except work done directly by any public utility  
7 company pursuant to order of the Public Utilities Commission or  
8 other public authority. For purposes of this paragraph,  
9 “construction” includes work performed during the design and  
10 preconstruction phases of construction, including, but not limited  
11 to, inspection and land surveying work, and work performed during  
12 the postconstruction phases of construction, including, but not  
13 limited to, all cleanup work at the jobsite. For purposes of this  
14 paragraph, “installation” includes, but is not limited to, the  
15 assembly and disassembly of freestanding and affixed modular  
16 office systems.  
17 (2) Work done for irrigation, utility, reclamation, and  
18 improvement districts, and other districts of this type. “Public  
19 work” does not include the operation of the irrigation or drainage

1 system of any irrigation or reclamation district, except as used in  
2 Section 1778 relating to retaining wages.

3 (3) Street, sewer, or other improvement work done under the  
4 direction and supervision or by the authority of any officer or  
5 public body of the state, or of any political subdivision or district  
6 thereof, whether the political subdivision or district operates under  
7 a freeholder's charter or not.

8 (4) The laying of carpet done under a building lease-maintenance  
9 contract and paid for out of public funds.

10 (5) The laying of carpet in a public building done under contract  
11 and paid for in whole or in part out of public funds.

12 (6) Public transportation demonstration projects authorized  
13 pursuant to Section 143 of the Streets and Highways Code.

14 (b) For purposes of this section, "paid for in whole or in part  
15 out of public funds" means all of the following:

16 (1) The payment of money or the equivalent of money by the  
17 state or political subdivision directly to or on behalf of the public  
18 works contractor, subcontractor, or developer.

19 (2) Performance of construction work by the state or political  
20 subdivision in execution of the project.

21 (3) Transfer by the state or political subdivision of an asset of  
22 value for less than fair market price.

23 (4) Fees, costs, rents, insurance or bond premiums, loans, interest  
24 rates, or other obligations that would normally be required in the  
25 execution of the contract, that are paid, reduced, charged at less  
26 than fair market value, waived, or forgiven by the state or political  
27 subdivision.

28 (5) Money loaned by the state or political subdivision that is to  
29 be repaid on a contingent basis.

30 (6) Credits that are applied by the state or political subdivision  
31 against repayment obligations to the state or political subdivision.

32 (c) Notwithstanding subdivision (b):

33 (1) Private residential projects built on private property are not  
34 subject to the requirements of this chapter unless the projects are  
35 built pursuant to an agreement with a state agency, redevelopment  
36 agency, or local public housing authority.

37 (2) If the state or a political subdivision requires a private  
38 developer to perform construction, alteration, demolition,  
39 installation, or repair work on a public work of improvement as a  
40 condition of regulatory approval of an otherwise private

1 development project, and the state or political subdivision  
2 contributes no more money, or the equivalent of money, to the  
3 overall project than is required to perform this public improvement  
4 work, and the state or political subdivision maintains no proprietary  
5 interest in the overall project, then only the public improvement  
6 work shall thereby become subject to this chapter.

7 (3) If the state or a political subdivision reimburses a private  
8 developer for costs that would normally be borne by the public,  
9 or provides directly or indirectly a public subsidy to a private  
10 development project that is de minimis in the context of the project,  
11 an otherwise private development project shall not thereby become  
12 subject to the requirements of this chapter.

13 (4) The construction or rehabilitation of affordable housing units  
14 for low- or moderate-income persons pursuant to paragraph (5) or  
15 (7) of subdivision (e) of Section 33334.2 of the Health and Safety  
16 Code that are paid for solely with moneys from the Low and  
17 Moderate Income Housing Fund established pursuant to Section  
18 33334.3 of the Health and Safety Code or that are paid for by a  
19 combination of private funds and funds available pursuant to  
20 Section 33334.2 or 33334.3 of the Health and Safety Code do not  
21 constitute a project that is paid for in whole or in part out of public  
22 funds.

23 ~~(5) "Paid for in whole or in part out of public funds" does not~~  
24 ~~include tax credits provided pursuant to Section 17053.49 or 23649~~  
25 ~~of the Revenue and Taxation Code.~~

26 ~~(6)~~

27 (5) Unless otherwise required by a public funding program, the  
28 construction or rehabilitation of privately owned residential projects  
29 is not subject to the requirements of this chapter if one or more of  
30 the following conditions are met:

31 (A) The project is a self-help housing project in which no fewer  
32 than 500 hours of construction work associated with the homes  
33 are to be performed by the home buyers.

34 (B) The project consists of rehabilitation or expansion work  
35 associated with a facility operated on a not-for-profit basis as  
36 temporary or transitional housing for homeless persons with a total  
37 project cost of less than twenty-five thousand dollars (\$25,000).

38 (C) Assistance is provided to a household as either mortgage  
39 assistance, downpayment assistance, or for the rehabilitation of a  
40 single-family home.

1 (D) The project consists of new construction, expansion, or  
2 rehabilitation work associated with a facility developed by a  
3 nonprofit organization to be operated on a not-for-profit basis to  
4 provide emergency or transitional shelter and ancillary services  
5 and assistance to homeless adults and children. The nonprofit  
6 organization operating the project shall provide, at no profit, not  
7 less than 50 percent of the total project cost from nonpublic  
8 sources, excluding real property that is transferred or leased. Total  
9 project cost includes the value of donated labor, materials,  
10 architectural, and engineering services.

11 (E) The public participation in the project that would otherwise  
12 meet the criteria of subdivision (b) is public funding in the form  
13 of below-market interest rate loans for a project in which  
14 occupancy of at least 40 percent of the units is restricted for at  
15 least 20 years, by deed or regulatory agreement, to individuals or  
16 families earning no more than 80 percent of the area median  
17 income.

18 (d) Notwithstanding any provision of this section to the contrary,  
19 the following projects shall not, solely by reason of this section,  
20 be subject to the requirements of this chapter:

21 (1) Qualified residential rental projects, as defined by Section  
22 142(d) of the Internal Revenue Code, financed in whole or in part  
23 through the issuance of bonds that receive allocation of a portion  
24 of the state ceiling pursuant to Chapter 11.8 ~~of Division 4~~  
25 (commencing with Section 8869.80) of *Division 1 of Title 2* of the  
26 Government Code on or before December 31, 2003.

27 (2) Single-family residential projects financed in whole or in  
28 part through the issuance of qualified mortgage revenue bonds or  
29 qualified veterans' mortgage bonds, as defined by Section 143 of  
30 the Internal Revenue Code, or with mortgage credit certificates  
31 under a Qualified Mortgage Credit Certificate Program, as defined  
32 by Section 25 of the Internal Revenue Code, that receive allocation  
33 of a portion of the state ceiling pursuant to Chapter 11.8 ~~of Division~~  
34 ~~4~~ (commencing with Section 8869.80) of *Division 1 of Title 2* the  
35 Government Code on or before December 31, 2003.

36 (3) Low-income housing projects that are allocated federal or  
37 state low-income housing tax credits pursuant to Section 42 of the  
38 Internal Revenue Code, Chapter 3.6 ~~of Division 31~~ (commencing  
39 with Section 50199.4) of *Part 1 of Division 31* of the Health and

1 Safety Code, or Section 12206, 17058, or 23610.5 of the Revenue  
2 and Taxation Code, on or before December 31, 2003.

3 (e) If a statute, other than this section, or a regulation, other than  
4 a regulation adopted pursuant to this section, or an ordinance or a  
5 contract applies this chapter to a project, the exclusions set forth  
6 in subdivision (d) do not apply to that project.

7 (f) For purposes of this section, references to the Internal  
8 Revenue Code mean the Internal Revenue Code of 1986, as  
9 amended, and include the corresponding predecessor sections of  
10 the Internal Revenue Code of 1954, as amended.

11 (g) The amendments made to this section by either Chapter 938  
12 of the Statutes of 2001 or the act adding this subdivision shall not  
13 be construed to preempt local ordinances requiring the payment  
14 of prevailing wages on housing projects.

15 *SEC. 1.5. Section 1720 of the Labor Code is amended to read:*

16 1720. (a) As used in this chapter, “public works” means:

17 (1) Construction, alteration, demolition, installation, or repair  
18 work done under contract and paid for in whole or in part out of  
19 public funds, except work done directly by any public utility  
20 company pursuant to order of the Public Utilities Commission or  
21 other public authority. For purposes of this paragraph,  
22 “construction” includes work performed during the design and  
23 preconstruction phases of construction, including, but not limited  
24 to, inspection and land surveying ~~work.~~ *work, and work performed*  
25 *during the postconstruction phases of construction, including, but*  
26 *not limited to, all cleanup work at the jobsite.* For purposes of this  
27 paragraph, “installation” includes, but is not limited to, the  
28 assembly and disassembly of freestanding and affixed modular  
29 office systems.

30 (2) Work done for irrigation, utility, reclamation, and  
31 improvement districts, and other districts of this type. “Public  
32 work” does not include the operation of the irrigation or drainage  
33 system of any irrigation or reclamation district, except as used in  
34 Section 1778 relating to retaining wages.

35 (3) Street, sewer, or other improvement work done under the  
36 direction and supervision or by the authority of any officer or  
37 public body of the state, or of any political subdivision or district  
38 thereof, whether the political subdivision or district operates under  
39 a freeholder’s charter or not.

1 (4) The laying of carpet done under a building lease-maintenance  
2 contract and paid for out of public funds.

3 (5) The laying of carpet in a public building done under contract  
4 and paid for in whole or in part out of public funds.

5 (6) Public transportation demonstration projects authorized  
6 pursuant to Section 143 of the Streets and Highways Code.

7 (7) (A) *Infrastructure project grants from the California*  
8 *Advanced Services Fund pursuant to Section 281 of the Public*  
9 *Utilities Code.*

10 (B) *For purposes of this paragraph, the Public Utilities*  
11 *Commission is not the awarding body or the body awarding the*  
12 *contract, as defined in Section 1722.*

13 (b) For purposes of this section, “paid for in whole or in part  
14 out of public funds” means all of the following:

15 (1) The payment of money or the equivalent of money by the  
16 state or political subdivision directly to or on behalf of the public  
17 works contractor, subcontractor, or developer.

18 (2) Performance of construction work by the state or political  
19 subdivision in execution of the project.

20 (3) Transfer by the state or political subdivision of an asset of  
21 value for less than fair market price.

22 (4) Fees, costs, rents, insurance or bond premiums, loans, interest  
23 rates, or other obligations that would normally be required in the  
24 execution of the contract, that are paid, reduced, charged at less  
25 than fair market value, waived, or forgiven by the state or political  
26 subdivision.

27 (5) Money loaned by the state or political subdivision that is to  
28 be repaid on a contingent basis.

29 (6) Credits that are applied by the state or political subdivision  
30 against repayment obligations to the state or political subdivision.

31 (c) Notwithstanding subdivision (b):

32 (1) Private residential projects built on private property are not  
33 subject to the requirements of this chapter unless the projects are  
34 built pursuant to an agreement with a state agency, redevelopment  
35 agency, or local public housing authority.

36 (2) If the state or a political subdivision requires a private  
37 developer to perform construction, alteration, demolition,  
38 installation, or repair work on a public work of improvement as a  
39 condition of regulatory approval of an otherwise private  
40 development project, and the state or political subdivision

1 contributes no more money, or the equivalent of money, to the  
2 overall project than is required to perform this public improvement  
3 work, and the state or political subdivision maintains no proprietary  
4 interest in the overall project, then only the public improvement  
5 work shall thereby become subject to this chapter.

6 (3) If the state or a political subdivision reimburses a private  
7 developer for costs that would normally be borne by the public,  
8 or provides directly or indirectly a public subsidy to a private  
9 development project that is de minimis in the context of the project,  
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13 for low- or moderate-income persons pursuant to paragraph (5) or  
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15 Code that are paid for solely with moneys from the Low and  
16 Moderate Income Housing Fund established pursuant to Section  
17 33334.3 of the Health and Safety Code or that are paid for by a  
18 combination of private funds and funds available pursuant to  
19 Section 33334.2 or 33334.3 of the Health and Safety Code do not  
20 constitute a project that is paid for in whole or in part out of public  
21 funds.

22 ~~(5) “Paid for in whole or in part out of public funds” does not~~  
23 ~~include tax credits provided pursuant to Section 17053.49 or 23649~~  
24 ~~of the Revenue and Taxation Code.~~

25 ~~(6)~~

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27 construction or rehabilitation of privately owned residential projects  
28 is not subject to the requirements of this chapter if one or more of  
29 the following conditions are met:

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31 than 500 hours of construction work associated with the homes  
32 are to be performed by the home buyers.

33 (B) The project consists of rehabilitation or expansion work  
34 associated with a facility operated on a not-for-profit basis as  
35 temporary or transitional housing for homeless persons with a total  
36 project cost of less than twenty-five thousand dollars (\$25,000).

37 (C) Assistance is provided to a household as either mortgage  
38 assistance, downpayment assistance, or for the rehabilitation of a  
39 single-family home.



1 (D) The project consists of new construction, expansion, or  
2 rehabilitation work associated with a facility developed by a  
3 nonprofit organization to be operated on a not-for-profit basis to  
4 provide emergency or transitional shelter and ancillary services  
5 and assistance to homeless adults and children. The nonprofit  
6 organization operating the project shall provide, at no profit, not  
7 less than 50 percent of the total project cost from nonpublic  
8 sources, excluding real property that is transferred or leased. Total  
9 project cost includes the value of donated labor, materials,  
10 architectural, and engineering services.

11 (E) The public participation in the project that would otherwise  
12 meet the criteria of subdivision (b) is public funding in the form  
13 of below-market interest rate loans for a project in which  
14 occupancy of at least 40 percent of the units is restricted for at  
15 least 20 years, by deed or regulatory agreement, to individuals or  
16 families earning no more than 80 percent of the area median  
17 income.

18 (d) Notwithstanding any provision of this section to the contrary,  
19 the following projects shall not, solely by reason of this section,  
20 be subject to the requirements of this chapter:

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22 142(d) of the Internal Revenue Code, financed in whole or in part  
23 through the issuance of bonds that receive allocation of a portion  
24 of the state ceiling pursuant to Chapter 11.8 ~~of Division 4~~  
25 (commencing with Section 8869.80) of *Division 1 of Title 2 of* the  
26 Government Code on or before December 31, 2003.

27 (2) Single-family residential projects financed in whole or in  
28 part through the issuance of qualified mortgage revenue bonds or  
29 qualified veterans' mortgage bonds, as defined by Section 143 of  
30 the Internal Revenue Code, or with mortgage credit certificates  
31 under a Qualified Mortgage Credit Certificate Program, as defined  
32 by Section 25 of the Internal Revenue Code, that receive allocation  
33 of a portion of the state ceiling pursuant to Chapter 11.8 ~~of Division~~  
34 ~~4~~ (commencing with Section 8869.80) of *Division 1 of Title 2 of*  
35 the Government Code on or before December 31, 2003.

36 (3) Low-income housing projects that are allocated federal or  
37 state low-income housing tax credits pursuant to Section 42 of the  
38 Internal Revenue Code, Chapter 3.6 ~~of Division 31~~ (commencing  
39 with Section 50199.4) of *Part 1 of Division 31 of* the Health and

1 Safety Code, or Section 12206, 17058, or 23610.5 of the Revenue  
2 and Taxation Code, on or before December 31, 2003.

3 (e) If a statute, other than this section, or a regulation, other than  
4 a regulation adopted pursuant to this section, or an ordinance or a  
5 contract applies this chapter to a project, the exclusions set forth  
6 in subdivision (d) do not apply to that project.

7 (f) For purposes of this section, references to the Internal  
8 Revenue Code mean the Internal Revenue Code of 1986, as  
9 amended, and include the corresponding predecessor sections of  
10 the Internal Revenue Code of 1954, as amended.

11 (g) The amendments made to this section by either Chapter 938  
12 of the Statutes of 2001 or the act adding this subdivision shall not  
13 be construed to preempt local ordinances requiring the payment  
14 of prevailing wages on housing projects.

15 *SEC. 2. Section 1.5 of this bill incorporates amendments to*  
16 *Section 1720 of the Labor Code proposed by both this bill and*  
17 *Assembly Bill 2272. It shall only become operative if (1) both bills*  
18 *are enacted and become effective on or before January 1, 2015,*  
19 *(2) each bill amends Section 1720 of the Labor Code, and (3) this*  
20 *bill is enacted after Assembly Bill 2272, in which case Section 1*  
21 *of this bill shall not become operative.*

22 ~~SEC. 2.~~

23 *SEC. 3.* No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 the only costs that may be incurred by a local agency or school  
26 district will be incurred because this act creates a new crime or  
27 infraction, eliminates a crime or infraction, or changes the penalty  
28 for a crime or infraction, within the meaning of Section 17556 of  
29 the Government Code, or changes the definition of a crime within  
30 the meaning of Section 6 of Article XIII B of the California  
31 Constitution.